



## TEXAS DEPARTMENT OF INSURANCE

### Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

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## MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION

### GENERAL INFORMATION

**Requestor Name**

Memorial Compounding Pharmacy

**Respondent Name**

State Office of Risk Management

**MFDR Tracking Number**

M4-17-1987-01

**Carrier's Austin Representative**

Box Number 45

**MFDR Date Received**

February 28, 2017

### REQUESTOR'S POSITION SUMMARY

**Requestor's Position Summary:** "The attached bills have been denied stating no preauthorization was obtained. We submitted reconsideration but the bill was still denied. We are now requesting Medical Fee Dispute Resolution."

**Amount in Dispute:** \$726.61

### RESPONDENT'S POSITION SUMMARY

**Respondent's Position Summary:** "Meloxicam is an 'N' status medication on the Drug Formulary..."

**Response Submitted by:** State Office of Risk Management

### SUMMARY OF FINDINGS

Dates of Service	Disputed Services	Amount In Dispute	Amount Due
August 25, 2016	Pharmacy Services – Compound	\$726.61	\$726.61

### FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and applicable rules of the Texas Department of Insurance, Division of Workers' Compensation.

**Background**

1. 28 Texas Administrative Code §133.305 sets out the procedures for resolving medical disputes.
2. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
3. 28 Texas Administrative Code §137.100 defines the treatment guidelines.
4. 28 Texas Administrative Code §134.500 defines terms used in pharmaceutical billing.
5. 28 Texas Administrative Code §134.502 sets out the procedures for pharmaceutical benefits.
6. 28 Texas Administrative Code §134.503 sets out the fee guidelines for pharmaceutical services.
7. 28 Texas Administrative Code §134.540 sets out the closed formulary requirements for claims subject to certified networks.

8. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes:
  - 15 – Payment adjusted because the submitted authorization number is missing, invalid, or does not apply to the billed services or provider.
  - 293 – This procedure requires prior authorization and none was identified.
  - W3 – Additional payment made on appeal/reconsideration.

### Issues

1. What is the service in dispute?
2. Is State Office of Risk Management's denial of payment for the disputed service supported?
3. Is Memorial Compounding Pharmacy (Memorial) entitled to reimbursement for the disputed service?

### Findings

1. Memorial is seeking reimbursement of \$726.61 for a compound cream dispensed on August 25, 2016. The compound contains the following ingredients:

- Flurbiprofen, NDC 38779036209, 4.8 gm
- Meloxicam, NDC 38779274601, 0.18 gm
- Ethoxy Diglicol, NDC 38779190301, 3 ml
- Bupivacaine HCl, NDC 38779052405, 1.2 gm
- Cyclobenzaprine HCl, NDC 38779039509, 1.8 gm
- Tramadol HCl, NDC 38779237409, 6 gm
- Versapro Cream Base, NDC 38779252903, 45.02 gm

This is the service considered in this dispute

2. The only denial reason presented to Memorial prior to the date the request for MFDR was filed was preauthorization. State Office of Risk Management (SORM) denied the disputed service with claim adjustment reason codes 15 – "PAYMENT ADJUSTED BECAUSE THE SUBMITTED AUTHORIZATION NUMBER IS MISSING, INVALID, OR DOES NOT APPLY TO THE BILLED SERVICES OR PROVIDER," and 293 – "THIS PROCEDURE REQUIRES PRIOR AUTHORIZATION AND NONE WAS IDENTIFIED."

SORM argued in its position statement that 28 Texas Administrative Code §137.100(f) states that "A health care provider that proposes treatments and services which exceed, or are not included, in the treatment guidelines may be required to obtain preauthorization in accordance with §134.600."

28 Texas Administrative Code §134.500(3) defines the closed formulary, which adopts the *ODG Treatment in Workers' Comp* (ODG) / Appendix A, *ODG Workers' Compensation Drug Formulary* rather than the treatment guidelines found in 28 Texas Administrative Code §137.100, as "all Food and Drug Administration (FDA) approved prescription and nonprescription drugs prescribed and dispensed for outpatient use" except those requiring preauthorization. 28 Texas Administrative Code §134.540(b) that preauthorization is **only** required for the following reasons:

- **Drugs identified with a status of "N" in the current edition of the *ODG, Appendix A*, and any updates.** SORM did not assert this reason through its explanation of benefits or its position statement.
- **Any investigational or experimental drug for which there is early, developing scientific or clinical evidence demonstrating the potential efficacy of the treatment, but which is not yet broadly accepted as the prevailing standard of care as defined in Labor Code §413.014(a).** SORM did not assert this reason through its explanation of benefits or its position statement.
- **Any compound that contains a drug identified with a status of "N" in the current edition of the *ODG, Appendix A*, and any updates.** SORM asserted that "Meloxicam is an 'N' status medication on the Drug Formulary ..." Review of the *ODG, Appendix A* finds that the brand name formulation of

Meloxicam, Vivlodex, has a status of “N” with no generic equivalents. The ingredient sought by Memorial, NDC 38779274601 is found to be a generic form of Meloxicam, which carries a status of “Y” in the *ODG, Appendix A*.

The division finds that the ingredients noted in the compound in question are included in the division’s closed formulary as the ingredients consist of FDA approved drugs and inactive ingredients and do not include a drug identified with a status of “N” in the current edition of the *ODG, Appendix A*.

SORM failed to raise any other defenses that the service in question required preauthorization in accordance with 28 Texas Administrative Code §134.540(b). Therefore, the division concludes that the compound in question did not require preauthorization and SORM’s denial for this reason is not supported.

3. 28 Texas Administrative Code §134.503 applies to the compound in dispute and states, in pertinent part:

- (c) The insurance carrier shall reimburse the health care provider or pharmacy processing agent for prescription drugs the lesser of:
  - (1) the fee established by the following formulas based on the average wholesale price (AWP) as reported by a nationally recognized pharmaceutical price guide or other publication of pharmaceutical pricing data in effect on the day the prescription drug is dispensed:
    - (A) Generic drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.25) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (B) Brand name drugs:  $((\text{AWP per unit}) \times (\text{number of units}) \times 1.09) + \$4.00$  dispensing fee per prescription = reimbursement amount;
    - (C) When compounding, a single compounding fee of \$15 per prescription shall be added to the calculated total for either paragraph (1)(A) or (B) of this subsection; or
  - (2) notwithstanding §133.20(e)(1) of this title (relating to Medical Bill Submission by Health Care Provider), the amount billed to the insurance carrier by the:
    - (A) health care provider; or
    - (B) pharmacy processing agent only if the health care provider has not previously billed the insurance carrier for the prescription drug and the pharmacy processing agent is billing on behalf of the health care provider.

The compound in dispute was billed by listing each drug included in the compound and calculating the charge for each drug separately as required by 28 Texas Administrative Code §134.502(d)(2). Each ingredient is listed below with its corresponding reimbursement amount.

Ingredient	NDC & Type	Price/ Unit	Total Units	AWP Formula §134.503(c)(1)	Billed Amt §134.503 (c)(2)	Lesser of (c)(1) and (c)(2)
Flurbiprofen	38779036209 Generic	\$36.58	4.8 gm	$\$36.58 \times 4.8 \times 1.25 = \$219.48$	\$175.58	\$175.58
Meloxicam	38779274601 Generic	\$194.67	0.18 gm	$\$194.67 \times 0.18 \times 1.25 = \$43.80$	\$35.04	\$35.04
Ethoxy Diglycol	38779190301 Generic	\$0.342	3.0 ml	$\$0.342 \times 3 \times 1.25 = \$1.28$	\$1.02	\$1.02
Bupivacain HCl	38779052405 Generic	\$45.60	1.2 gm	$\$45.60 \times 1.2 \times 1.25 = \$68.40$	\$54.72	\$54.72
Cyclobenzaprine HCl	38779039509 Generic	\$46.332	1.8 gm	$\$46.332 \times 1.8 \times 1.25 = \$104.25$	\$83.39	\$83.39
Tramadol HCl	38779237409 Generic	\$36.30	6.0 gm	$\$36.30 \times 6 \times 1.25 = \$272.25$	\$217.80	\$217.80
Versapro Cream Base	38779252903 Brand Name	\$3.20	45.02 gm	$\$3.20 \times 45.02 \times 1.09 = \$157.03$	\$144.06	\$144.06
Compounding Fee	NA	\$15.00	NA	\$15.00	\$15.00	\$15.00
Total						\$726.61

The total reimbursement is therefore \$726.61. This amount is recommended.

### Conclusion

For the reasons stated above, the Division finds that the requestor has established that additional reimbursement is due. As a result, the amount ordered is \$726.61.

### **ORDER**

Based on the submitted information, pursuant to Texas Labor Code Sec. 413.031 and 413.019 (if applicable), the Division has determined that the requestor is entitled to additional reimbursement for the services in dispute. The Division hereby ORDERS the respondent to remit to the requestor the amount of \$726.61, plus applicable accrued interest per 28 Texas Administrative Code §134.130, due within 30 days of receipt of this Order.

### Authorized Signature

_____	Laurie Garnes	May 30, 2017
Signature	Medical Fee Dispute Resolution Officer	Date

### **YOUR RIGHT TO APPEAL**

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, 37 *Texas Register* 3833, applicable to disputes filed on or after June 1, 2012.

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MFDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

**Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.**